

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

) MDL No. 1456

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

) Civil Action No. 01-CV-12257 PBS

) Judge Patti B. Saris

) Chief Magistrate Judge Marianne B. Bowler

**THE JOHNSON & JOHNSON DEFENDANTS' MEMORANDUM
REGARDING FORMS AND MANNER OF NOTICE PURSUANT TO
THE COURT'S REQUEST AT THE JUNE 5, 2006 HEARING**

Johnson & Johnson, Centocor, Inc., and Ortho Biotech Products, L.P. (the "J&J Defendants") hereby join with AstraZeneca Pharmaceuticals LP and the other Track 1 defendants in objecting to plaintiffs' proposed form and manner of class notice. As AstraZeneca points out, the parties have made substantial progress in their efforts to reach agreement. Nevertheless, the remaining areas of disagreement warrant careful scrutiny by the Court.

First, it is imperative that the Medicare Part B class receive actual notice by mail. Plaintiffs initially resisted giving actual notice, but appear now to acknowledge that actual notice is required. See AstraZeneca Memo. at 2-3.

Second, there should be a separate notice for each defendant group—and preferably each defendant—in order to maximize the notice's demographic reach and minimize confusion. In J&J's case, for example, the two drugs at issue, Procrit® and Remicade® are used by completely different patients. Procrit®, which is sold by Ortho Biotech, is used to treat anemia in cancer patients, pre-dialysis renal failure patients, AIDs patients, and surgery patients. Remicade, which is sold by Centocor, is used to treat arthritis and Crohn's disease. Plaintiffs

offer no evidence that these patient populations are overlapping and, in fact, there is no reason to expect that they would be.

Third, the J&J Defendants agree with AstraZeneca's assessment of the shortcomings in the content of plaintiffs' proposed notice, both as to Class 1 and Class 2. See AstraZeneca Memo. at 10-12; 15-16.

Finally, the J&J Defendants agree with AstraZeneca that plaintiffs' notice fails to make clear that Medicare Part B beneficiaries who did not pay for subject drugs have no legal obligation to do so under the Medicare statute or regulations. Id. at 12-14; .

In sum, as to the remaining areas where the parties have not been able to reach agreement, the J&J Defendants join AstraZeneca in opposing plaintiffs' proposed class notice.

Dated: June 21, 2006

/s/ Andrew D. Schau

William F. Cavanaugh, Jr.

Andrew D. Schau

PATTERSON BELKNAP WEBB & TYLER LLP

1133 Avenue of the Americas

New York, NY 10036-6710

(212) 336-2000

Attorneys for the Johnson & Johnson Defendants

CERTIFICATE OF SERVICE

I certify that on June 21, 2006, I caused a true and correct copy of the foregoing
MEMORANDUM REGARDING FORMS AND MANNER OF NOTICE PURSUANT TO
THE COURT'S REQUEST AT THE JUNE 5, 2006 HEARING to be served on all counsel via
Lexis/Nexis.

/s/ Andrew D. Schau
Andrew D. Schau